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Paper No.

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JUN 23 2008

In re Application of :
John M. Epley :
Application No. 10/715,871 : DECISION ON PETITION
Filed: November 17, 2003 : PURSUANT TO
Attorney Docket No.: 103419- : 37 C.F.R. § 1.181
0003 :
Title: HEAD-STABILIZED MEDICAL :
APPARATUS, SYSTEM AND :
METHODOLOGY :

This is a decision on the petition filed May 14, 2008, pursuant to 37 C.F.R. § 1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

It is noted in passing that Petitioner has not placed his entire registration number underneath the signature that has been placed on this petition.

Both a notice of appeal and a "Pre-Appeal Brief Request for Review" were submitted on September 7, 2007. The above-identified application became abandoned for failure to reply in a timely manner to the "Notice of Panel Decision from Pre-Appeal Brief Review," mailed November 2, 2007, which did not extend the period for submitting an Appeal Brief. No response was received, and no extensions of time under the provisions of 37 C.F.R. § 1.136(a) were requested. Accordingly, the above-identified application became abandoned on November 8, 2007. A notice of abandonment was mailed on April 14, 2008.

With this petition, Petitioner has asserted that a response was submitted to the Office on November 28, 2007 in the form of a Request for Continued Examination (RCE) and a preliminary

amendment. Petitioner has submitted a copy of this response, and it is noted that it contains a certificate of facsimile transmission, however it does not appear that Petitioner has provided a statement from the individual who executed this certificate of facsimile transmission.

It is further noted that Office records reflect the receipt of the fee that is associated with the filing of an RCE along with the fee that is associated with a petition for a one-month extension of time on November 28, 2007.

Petitioner has asserted

the holding of abandonment was improper and caused entirely (emphasis added) by inadvertent errors of the Office¹.

This statement does not appear to be accurate - as Petitioner has noted, the facsimile cover sheet that accompanied this submission contained the wrong series code: 11/715,871². Consequently, these papers were received, and placed into the electronic file that is associated with application serial number 11/715,871, pursuant to Petitioner's instruction.

Petitioner is reminded that errors such as occurred can result in loss of rights and care must be taken to avoid such. The Office will make an effort to assist practitioners if there is sufficient information on the filing to make possible identification of the proper application number³. Nonetheless, consistent with his/her duty under Pratt⁴ to handle the matter in the vein of one's most important business affairs, a practitioner must be cautious in preparation of his/her submissions⁵.

It is clear that the submission was timely received on November 28, 2007, and placed into the electronic file associated with application number 11/715,871. Accordingly, the petition under 37 C.F.R. §1.181(a) is **GRANTED**. The holding of abandonment is **WITHDRAWN**.

Both the RCE and the concurrently submitted amendment will be removed from the electronic file associated with application

¹ Petition, page 3.

² The RCE, the amendment, and the petition for an extension of time each contain the correct series code.

³ See MPEP §§ 508.03(III) and 724.05(III).

⁴ Ex parte Pratt, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).

⁵ See MPEP § 502, which sets forth, in pertinent part, "Application number (checked for accuracy, including series code and serial no.) ...").

number 11/715,871, and placed into the electronic file associated with the present application in due course..

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the submission under 37 C.F.R. § 1.114 - the amendment filed on November 28, 2007 - can be processed.

Petitioner may find it beneficial to view Private PAIR within a fortnight of the present decision to ensure that the withdrawal of the holding of abandonment has been acknowledged by the Technology Center in response to this decision. It is noted that all inquiries with regard to any failure of that change in status should be directed to the Technology Center where that change of status must be effected - the Office of Petitions cannot effectuate a change of status.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225⁶. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.

/Paul Shanowski/
Paul Shanowski
Senior Attorney
Office of Petitions

⁶ Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).